

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20750

Application 25516 of Contra Costa Water District,

1331 Concord Avenue, Concord, CA 94524

filed on September 30, 1977, has been approved by the State Water Resources Control Board
SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

Kellogg Creek

Old River thence

San Joaquin Delta Channels

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Projected Section	Township	Range	Base and Meridian
<u>By California Coordinate System,</u> <u>Zone 3, Los Vaqueros Dam</u> North 489,200 feet and East 1,645,700 feet	NW $\frac{1}{4}$ of NW $\frac{1}{4}$	23	1S	2E	MD

County of Contra Costa

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acres
Incidental Fish and Wildlife Preservation and/or Enhancement						
Water Quality						
Recreation						
Domestic						
Municipal						
Industrial						
Irrigation	Contra Costa Water District, Pittsburg, Antioch, Brentwood, Oakley, Los Vaqueros recreation area, and rural county subarea		2S 1S 1N 2N 3N	3W 2W 1W 1E 2E 3E 4E	MD	931

The place of use is shown on map on file with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 115 cubic feet per second by direct diversion and 9,640 acre-feet per annum by storage from January 1 to December 31 of each year. The total amount of water to be taken from the source shall not exceed 9,640 acre-feet per water year of October 1 to September 30. (0000005)
6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
7. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked. (0000007)
8. Construction work shall be completed by December 31, 1999. (0000008)
9. Complete application of the water to the authorized use shall be made by December 31, 2025. (0000009)
10. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued. (0000010)

11. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)

12. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

13. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the state Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1)adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2)the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

14. The equivalent of the authorized continuous flow allowance for any 30-day period may be diverted in a shorter time, provided there is no interference with other rights and instream beneficial uses, and provided further that all terms and conditions protecting instream beneficial uses are observed. (0000027)

15. Permittee shall consult with the Division of Water Rights and, within one year from the date of this permit, shall submit to the State Water Resources Control Board its Urban Water Management Plan as prepared and adopted in conformance with Section 10610, et seq. of the California Water Code, supplemented by any additional information that may be required by the Board.

All cost-effective measures identified in the Urban Water Management Plan and any supplements thereto shall be implemented in accordance with the schedule for implementation found therein. (000029A)

16. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipe to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the outlet pipe has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer. (0050043)

17. If the storage dam will be of such size as to be within the jurisdiction of the Department of Water Resources as to safety, construction under this permit shall not be commenced until the Department has approved the plans and specifications for the dam. (0360048)

18. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes. (0120050)

19. In accordance with Section 1601, 1603, and/or Section 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted under this permit until permittee has entered into a stream or lake alteration agreement with the California Department of Fish and Game and/or the Department has determined that measures to protect fishlife have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of the permittee. (0000063)

20. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the Board concerning availability of water and the protection of beneficial uses of water in the Sacramento-San Joaquin Delta and San Francisco Bay. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing. (0000080)

21. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the San Joaquin River are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing. (0000090)

22. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, San Francisco Bay Region, or by the State Water Resources Control Board. (0000100)
23. Diversion of water under this permit for use outside the county of origin shall be subject to rights initiated by applications for use within said county regardless of the date of filing said applications, as provided in Water Code Section 10505.5. (0000999)
24. Before making any change in the project determined by the State Water Resources Control Board to be substantial, permittee shall submit such change to the Board for its approval in compliance with Water Code Section 10504.5(a). (0090900)
25. Permittee shall, from March 1 through July 1 of each year, bypass a sufficient quantity of Kellogg Creek inflow into Los Vaqueros Reservoir to provide 0.67 cubic feet per second or the natural flow, whichever is less, for diversion under License 5173 at the authorized point of diversion under License 5173. The permittee shall bypass adequate flow to account for channel losses and evaporation upstream of the point of diversion under License 5173. Nothing in this permit term shall be construed as requiring release of stored water obtained from other sources or Kellogg Creek water stored prior to March 1 of each water year. Subject to the agreement of the holder of License 5173, permittee may instead provide water in sufficient quantity from an alternate source or in an alternative regime during the March 1 through July 1 period, including purchased water, to approximate the quantity which would be available under License 5173 as unimpaired runoff in Kellogg Creek. Such alternative water supply may be substituted only if the place of use of the alternative water supply includes the place of use of License 5173. (0220400)
26. Permittee shall release water from Los Vaqueros Reservoir at a rate equal to the estimated inflow to the reservoir, up to a maximum of 5 cubic feet per second. Permittee shall release sufficient water from the reservoir at all times to maintain existing perennial pools in the 1-mile reach immediately downstream of the dam. (0160400)
27. The permittee shall maintain a daily record of direct diversion and collection to storage under this permit and submit such record to the Division of Water Rights on an annual basis. The record of water use under the permit may not be combined with diversion or storage records for water use under other rights maintained by the permittee. (0090900)
28. For the protection of fish and wildlife resources in Kellogg Creek downstream of the Los Vaqueros Dam, permittee shall:
- a. Install a temporary pipe to divert Kellogg Creek streamflow around the area that will be disturbed during construction of the Los Vaqueros Dam and convey water diverted back into Kellogg Creek downstream of the construction area during dam construction. This temporary diversion shall be operated in a manner which will minimize sedimentation of Kellogg Creek below the dam during dam construction.

- b. Implement measures to prevent downstream water quality impacts during construction and operation, including restricting stream crossings to low-flow seasons, prohibiting use of streamflow for construction activities, prohibiting operation of construction equipment in flowing water outside the Los Vaqueros Reservoir inundation area, and employing suitable design criteria for stream crossing structures.
- c. Immediately following cessation of temporary diversion of Kellogg Creek, permittee shall implement the release schedule specified in Condition 26 above.
- d. No water shall be diverted under this permit until permittee has installed devices or provided other means satisfactory to the State Water Resources Control Board, to measure: (1) Kellogg Creek natural flow into Los Vaqueros Reservoir; and (2) minimum Kellogg Creek streamflows required by this permit. The permittee shall be responsible for monitoring compliance with the minimum streamflow requirements of this permit.

(0400500)
(0060062)

29. Permittee shall comply with all legally binding requirements of the California Department of Fish and Game, the United States Fish and Wildlife Service, and the National Marine Fisheries Service imposed under either the federal Endangered Species Act (16 U.S.C.A. Sections 1531 to 1544) or the California Endangered Species Act (Fish and Game Code Sections 2050 to 2098), with respect to the Los Vaqueros Project.

(0600500)

30. Permittee shall comply with the "Programmatic Agreement Among the U.S. Bureau of Reclamation (USBR), Contra Costa Water District, the California State Historic Preservation Office and the Advisory Council on Historic Preservation Regarding the Implementation of the Los Vaqueros Project", executed on February 3, 1993, and shall comply with it as it may be amended in the future. Permittee also shall comply with all historic property treatment plans prepared under the Programmatic Agreement.

The permittee shall continue to consult with the U.S. Bureau of Reclamation, U.S. Army Corps of Engineers, the Chief, Division of Water Rights, the State Historic Preservation Officer and the Advisory Council on Historic Preservation regarding cultural resources until all stipulations of the Programmatic Agreement have been completed to the satisfaction of the agencies. The permittee also shall comply with the "Procedure for the Protection of Historic and Cultural Properties" (36 CFR 60) and the implementing regulations of the Advisory Council on Historic Preservation, 36 CFR 800.

Permittee shall comply with the Memorandum of Understanding executed July 21, 1993 between Contra Costa Water District and seven of the Native Americans Most Likely Descendants regarding treatment of Native American human remains and the selection of Native American monitors.

(0430300)

31. Permittee shall comply with mitigation measures 7-1 through 7-19 and 8-1 through 8-12 set forth at pages 19-5 through 19-8 of the final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) dated September 27, 1993. Permittee also shall comply with mitigation measures 1 through 13 under "Additional Environment Commitments Related to the Fish and Wildlife Coordination Act Report" set forth at pages 19-13 through 19-14 of the Final EIR/EIS. The Chief, Division of Water Rights, may grant a variance from any of these mitigation measures after making a finding that the variance will have no significant adverse effect on the environment. Any request for a variance shall include the reasons for the variance, environmental information necessary to demonstrate that it will not adversely affect the environment, and proof that the permittee has notified all interested parties of the request. (0400500)

32. Permittee shall in cooperation with the U.S. Bureau of Reclamation implement the mitigation monitoring and reporting measures for Bay-Delta fishery resources, Bay-Delta water quality, vegetation resources, wildlife resources, cultural resources, and to comply with the Fish and Wildlife Coordination Act (16 U.S.C. Section 661 et seq.), which are set forth in the Environmental Commitments and Mitigation Monitoring and Reporting Plan for the Los Vaqueros Project Stage 2 Environmental Impact Report/Environmental Impact Statement, dated October 27, 1993. Permittee in cooperation with the U.S. Bureau of Reclamation shall provide a report to the Chief, Division of Water Rights by April 1 of each year detailing the results of the previous year's monitoring, plans for the current year's monitoring, and the status of implementation of each mitigation measure required by this decision. (0400500)

33. No diversion is authorized that would adversely affect the operation of the Central Valley Project or State Water Project under permits and licenses for the Projects in effect on the date of this Order. An adverse effect shall be deemed to result from permittee's diversion at any time the U.S. Bureau of Reclamation and the Department of Water Resources have declared the Delta to be in balanced water conditions under the Coordinated Operation Agreement or at any other time that such diversion would directly or indirectly require the Central Valley Project or the State Water Project to release water from storage or to reduce their diversion or redirection of water from the Delta to provide or assure flow in the Delta required to meet any applicable provision of state or federal law. (0350900)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: **JULY 6 1994**

STATE WATER RESOURCES CONTROL BOARD

Roger Johnson
for Chief, Division of Water Rights